

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Implementation of the DTV Delay Act)	MB Docket No. 09-17
)	
To: Secretary, FCC		

COMMENTS

**KENTUCKY AUTHORITY FOR
EDUCATIONAL TELEVISION**

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Summary

The Kentucky Authority for Educational Television (“KET”), by its attorneys, hereby submits these comments in response to the Commission’s Notice of Proposed Rulemaking in the above-captioned proceeding. KET respectfully submits that stations should be permitted to flexibly terminate analog service prior to the June 12, 2009 DTV transition date in accordance with the Commission’s procedures for early analog termination (which flexibility Congress incorporated in the DTV Delay Act) – and without the additional regulatory burdens proposed in the Notice of Proposed Rulemaking.

KET requires flexibility to complete the digital transition by terminating analog service for its stations on April 16, 2009. Termination of analog service for KET’s stations on April 16th will best serve the public interest by ensuring a planned, locally-coordinated, and controlled termination of KET’s statewide analog service.

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COMMENTS

The Kentucky Authority for Educational Television (“KET”), by its attorneys, hereby submits these comments in response to the Commission’s *Notice of Proposed Rulemaking* (“*NPRM*”) in the above-captioned proceeding.¹ In the *NPRM*, the Commission tentatively concludes that stations may not terminate analog service prior to April 16, 2009 and proposes additional restrictions and requirements for termination of analog service prior to the June 12, 2009 DTV transition date. With due respect, KET is in an extreme financial hardship situation and needs to terminate analog service on April 16, 2009, as explained in these comments. Severe financial challenges and the prospect of continued technical failures require that KET terminate analog service for its stations as soon as possible.

Thus, KET respectfully submits that stations – like those of KET – should be permitted to terminate analog service prior to June 12, 2009. The Commission should permit such terminations flexibly in accordance with its already-established procedures for early analog termination (which flexibility Congress incorporated into the DTV Delay Act) – and without the additional regulatory burdens proposed in the *NPRM*.

I. Introduction

KET requires regulatory flexibility to complete the transition to digital television in a manner and timeframe that best serves its viewers and the public interest – including termination of analog service for its stations on April 16th, a date chosen by KET management and staff after taking into account the needs of KET and its viewers. Moreover, termination of analog service on April 16th will best serve the public interest by ensuring a planned, locally-coordinated, and controlled termination of KET's statewide analog service, which spans a multiple time zones, states and DMAs. Finally, the additional regulatory burdens proposed in the *NPRM* are unnecessary and would only increase the burden on stations working to complete the DTV transition.

II. Background

KET is the licensee of sixteen (16) public television stations² that provide a consolidated statewide public television service. KET was established by the Kentucky legislature in 1962 as an independent agency and instrumentality of the Commonwealth of Kentucky, with a statutory mandate to provide educational television to the citizens of Kentucky. KET commenced broadcast operations in 1968 is the largest PBS member network in the country. Over 98 percent of Kentucky residents receive the KET signal.

¹ See *Implementation of the DTV Delay Act*, Second Report and Order and Notice of Proposed Rulemaking, MB Docket No. 09-17, FCC 09-11 (rel. Feb. 20, 2009).

² WCVN-TV/DT (Facility ID No. 34204), WKAS(TV/DT) (Facility ID No. 34171), WKGB-TV/DT (Facility ID No. 34177), WKHA(TV/DT) (Facility ID No. 34196), WKLE(TV/DT) (Facility ID No. 34207), WKMA-TV/DT (Facility ID No. 34212), WKMJ-TV/DT (Facility ID No. 34195), WKMR(TV/DT) (Facility ID No. 34202), WKMU(TV/DT) (Facility ID No. 34174), WKOH(TV/DT) (Facility ID No. 34205), WKON(TV/DT) (Facility ID No. 34211), WKPC-TV/DT (Facility ID No. 21432), WKPD(TV/DT) (Facility ID No. 65758), WKPI-TV/DT (Facility ID No. 34200), WKSO-TV/DT (Facility ID No. 34222) and WKZT-TV/DT (Facility ID No. 34181).

KET provides quality public television programming across the state of Kentucky and portions of seven neighboring states, providing such service to two different time zones and ten different stand-alone DMAs. This programming consists of the national PBS schedule and KET's own wide range of local arts, educational, cultural, documentary, and public affairs productions. Online and over its digital broadcast network, KET also brings thousands of hours of instructional programs and KET-produced professional development seminars to Kentucky schools each year. KET's distance learning program uses the Internet, multimedia, and personal contact to deliver standards-based, fully accredited high school courses in foreign languages, the humanities, and physics. KET is also widely acknowledged as a premier producer of video instruction in adult basic skills and workplace education.

For years, KET has prepared to transition its television stations to digital operation on February 17, 2009. In 1999, KET commenced operation of the first digital television station in Kentucky. Since then, KET has completed construction and commenced post-transition digital operation of all 16 of its television stations – on time and without the need for special Commission approvals. This was an enormous feat of accomplishment by KET and its staff, but it has also meant that KET has been carrying the additional cost burden of dual analog/digital operations for almost a decade. KET's digital television stations provide multiple channels of public television programming including local, instructional and high-definition programming.

After the DTV transition date was postponed to June 12, 2009 – and in order to minimize confusion and disruption to viewers while the Commonwealth was in the midst of coping with an unprecedented winter storm disaster – KET heeded the Commissioner's calls to continue to operate its analog television stations beyond February 17th. KET did so fully expecting and

understanding that it would continue analog only for a short additional time – enough time to get beyond the storm disaster and to coordinate a new planned analog termination date. Thus, immediately after February 17th, KET began making plans to terminate analog service statewide on April 15th.

Had KET known and understood that, after allowing maximum flexibility for stations to terminate analog on or before February 17th, the FCC would then abruptly change course and stymie planned analog terminations, KET would have terminated analog on February 17th. Thus, KET now asks the FCC to let KET terminate analog service for its television stations on April 16th – at the earliest possible date contemplated by the NPRM – in order to conserve valuable public resources and ensure a planned, coordinated transition to digital television.

III. Regulatory Flexibility to Terminate Analog Service Early is Necessary for Stations to Complete the Transition to Digital Television

The ability for KET to terminate analog service on April 16th – prior to the DTV transition date and without additional regulatory burdens and restrictions – is necessary in order for KET's stations to complete the transition to digital television. Indeed, the imposition of additional regulatory burdens and restrictions on early analog termination would be contrary to the goals of both Congress and the Commission. In the case of KET, early analog termination of KET's stations is necessary in order to address critical and immediate financial and technical challenges related to the DTV transition.

In the *Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television* (the "*Third DTV Periodic*"), the Commission adopted rules to facilitate the introduction of DTV service.³ In doing so, the Commission recognized that the

³ See *Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, Report and Order, MB Docket No. 07-91, FCC 07-228 (rel. Dec. 31, 2007).

DTV transition is a “complex undertaking presenting many challenges to the broadcast industry and that some disruption of television service may be unavoidable leading up to the analog turn-off.”⁴ Accordingly the Commission adopted rules intended to provide “regulatory flexibility” to broadcasters, including procedures for the termination of analog service prior to the DTV transition date.⁵ Indeed, many public TV stations (approximately 40% of all licensed full service public TV stations) have already – and quite successfully – terminated analog service pursuant to these procedures.⁶

In enacting the DTV Delay Act, Congress expressly recognized that the “flexible” procedures for early analog service termination established in the *Third DTV Periodic* are still necessary to allow stations to complete the DTV transition – notwithstanding the postponement of the DTV transition date until June 12, 2009.⁷ In fact, Congress specifically enshrined the then-existing procedures of the *Third DTV Periodic* in the DTV Delay Act.⁸ Therefore, restricting the ability of stations to terminate analog service prior to the DTV transition date in compliance with the *Third DTV Periodic* would be contrary to the goal of both Congress and the Commission – to provide stations with the regulatory flexibility required to complete the transition to digital television.

For KET, early analog termination of KET’s stations is necessary in order to allow KET to avoid serious financial hardship and conserve valuable public resources. The recently enacted

⁴ See *id* at ¶ 2.

⁵ *Id* at ¶¶ 107-134.

⁶ Among the public television stations that have terminated analog early are the following state and regional networks: Alabama, Hawaii, Kansas, Maine, Nebraska, most of North Dakota, portions of Oklahoma, and South Carolina.

⁷ See DTV Delay Act at § 4(a).

⁸ See *id*.

state budget has eliminated \$2.9 million in general funds for KET in 2009, which represents a 19 percent cut from KET's original state funding for 2008.

The continued analog operation of KET's stations beyond February 17th has also required KET to incur significant – and unbudgeted – costs for electricity to power the analog transmitters amounting to approximately \$30,000. These additional costs have placed a serious financial strain on KET at a time when the Commonwealth of Kentucky has already experienced budget cuts and is contemplating additional budget cuts in response to the growing financial crisis. KET estimates that continued operation of the analog transmitters until June 12, 2009 will require it to incur another \$30,000 in unbudgeted electricity costs.

Early analog termination of KET's stations is thus essential to KET's efforts to reduce its operating costs and fulfill its responsibility to be a good steward of the public's resources. Indeed, continued operation of KET's analog stations would cause severe financial hardship to KET – potentially compromising KET's ability to provide its quality public television services after the DTV transition. The FCC should not force KET – which is funded by state taxpayers – to continue analog beyond April 16th.

Early analog termination for KET is also required in order to avoid unplanned and potentially catastrophic technical failures of the analog equipment for its stations. The KET Stations' analog equipment has had a long, long useful life, but the equipment is antiquated and now far beyond its service life. The equipment is hanging on by a mere thread.

KET stations have already suffered serious technical problems in recent weeks. Severe power outages related to a severe ice storm in late January forced stations WKMA-TV and WKMU(TV) off-air for a period of several days. More recently, on February 17th, a failure in the transmission line for station WKON(TV) forced the station off-air for several days until

repairs could be completed, which was followed by reduced power operation for one day as a precautionary measure. These repairs required KET to incur additional unbudgeted costs, including the costs of a tower crew.

Given the age of the analog equipment for KET's stations – and the fact that maintenance planning and equipment purchases (for years) were based on an analog termination date of February 17, 2009 – KET is concerned that, absent early termination of analog service, one or more of its stations may suffer a complete and total failure of analog service prior to the new DTV transition date of June 12, 2009.

IV. The Public Interest is Best Served by Allowing Stations to Terminate Analog Service Early in Accordance with the Commission's Established Procedures

Allowing KET's stations to terminate analog service early in accordance with the procedures established in the *Third DTV Periodic* would best serve the public interest. The procedures set forth in the *Third DTV Periodic* provide the proper balance between the need to provide stations with the regulatory flexibility necessary to complete the DTV transition and the need to ensure that viewer expectations are protected.

The *Third DTV Periodic* established streamlined procedures for stations to permanently terminate their analog service prior to the DTV transition date if necessary to achieve their transition to digital operation.⁹ At the same time, however, the *Third DTV Periodic* also required that stations terminating analog service early must provide viewer notifications regarding the early analog service termination for a period of 30 days.¹⁰ This combination of regulatory flexibility and viewer protection best serves the public interest.

⁹ *Id* at ¶ 133.

¹⁰ *Id* at ¶ 134.

In the case of KET, early termination of analog service in accordance with the *Third DTV Periodic* will allow KET to engage in a planned and coordinated transition of its stations to digital television. KET must transition all 16 of its television stations from analog to digital operation in the way that is best for KET and its viewers. Accordingly, and because KET's stations broadcast a fully consolidated program schedule (i.e., all stations simulcast), a coordinated transition of all of KET's stations will be necessary in order to avoid confusion and disruption to viewers.

KET is concerned, however, that technical failures may cause one or more of its stations to suffer an unplanned termination of analog service prior to the DTV transition date. Such an unplanned termination of analog service for KET's stations would result in an unexpected loss of service for television viewers and hinder KET's efforts to ensure that viewers are aware of – and able to prepare for – KET's transition to digital television. Early termination of analog service for KET's stations in accordance with the procedures established in the *Third DTV Periodic* will thus best serve the public interest by allowing KET to coordinate the transition of its stations to digital television and provide viewers with the information necessary to plan and prepare for the termination of KET's analog service.

V. The Proposed Changes to the Commission's Established Procedures for Early Analog Termination Are Unnecessary

It is neither necessary nor appropriate to change the Commission's established procedures for early termination of analog service. The DTV Delay Act, which postponed the DTV transition date from February 17, 2009 to June 12, 2009, allows stations to continue to

terminate analog service prior to the DTV transition date in accordance with the procedures established in the *Third DTV Periodic*.¹¹ Section 4(a) of the DTV Delay Act states:

Nothing in this Act is intended to prevent a licensee of a television broadcast station from terminating the broadcasting of such stations' analog television signal ... prior to the [DTV transition date] so long as such prior termination is conducted in accordance with the Federal Communication's Commission's requirements in effect on the date of enactment of this Act, including the flexible procedures established in the [*Third DTV Periodic*] (emphasis added).

Furthermore, as the Commission has previously recognized, the procedures set forth in the *Third DTV Periodic* are already "consistent with the express language in the DTV Delay Act and will protect viewer expectations."¹² Consequently, the restrictions and additional requirements for early analog termination proposed in the *NPRM* are, at best, unnecessary to implement the postponement of the DTV transition date. At worst, the additional regulatory burdens proposed in the *NPRM* are directly contrary to the intent of Congress to preserve the ability of stations to terminate analog service prior to the DTV transition date in accordance with the procedures established in the *Third DTV Periodic*.

VI. The Proposed Changes to the Commission's Established Procedures for Early Analog Termination Would Only Increase the Burdens on Stations

The changes to the Commission's procedures for early analog termination proposed in the *NPRM* would impose additional – and substantial – burdens on stations as they work to complete the Congressionally-mandated transition to digital television. At the same time, however, they would do little if anything to increase the protection of viewer expectations.

¹¹ See DTV Delay Act, Pub. L. No. 111-4, 123 Stat. 112 (2009).

¹² See *FCC Announces Procedures Regarding Termination of Analog Service On or After February 17, 2009*, Public Notice, FCC 09-06 at (Feb. 5, 2009).

Specifically, the Commission in the *NPRM* has proposed the following additional restrictions on early analog termination of service:

1. Stations will not be permitted to terminate analog service prior to April 16, 2009;¹³
2. Stations will not be permitted to change their date for analog service termination without a strong justification and express Commission approval;¹⁴
3. Stations will not be permitted to rely on Section 73.1615 to terminate analog service in the 30 days prior to the DTV transition date;¹⁵
4. Stations will not be permitted to air viewer notifications for fewer than 30 days under *any* circumstances;¹⁶
5. Stations will not be permitted to terminate analog service early if the Commission believes such termination is not the public interest;¹⁷

The Commission has also proposed the following additional requirements on stations seeking to terminate analog service prior to the DTV transition date:

1. Requiring a longer on-air viewer notification period up to 60 days;¹⁸
2. Requiring viewer notifications to commence uniformly on a date certain or, instead, as soon as the station's intended termination date is finalized;¹⁹
3. Requiring stations to air a crawl for the seven days prior to their termination of analog service;²⁰
4. Requiring stations to provide sufficient information to show that early analog termination is necessary and in the public interest;²¹

¹³ See *NPRM* at ¶ 48.

¹⁴ See *id* at ¶ 49.

¹⁵ See *id*.

¹⁶ See *id* at ¶ 50.

¹⁷ See *id* at ¶ 56.

¹⁸ See *id* at ¶ 50.

¹⁹ See *id*.

²⁰ See *id*.

5. Requiring stations to certify that there will be continuing analog service to a substantial portion of their analog audience until June 12th;²²
6. Requiring stations to certify that that they will comply with certain public interest conditions;²³
7. Requiring stations to select a final transition date that will enable other interested parties to make their plans and preparations for the station's transition;²⁴
8. Requiring stations to closely coordinate with other stations serving the same viewing area if they intend to terminate analog service before June 12th;²⁵
9. Requiring stations to continue broadcasting an analog signal until 11:59:59 pm local time;²⁶
10. Requiring stations to inform the Commission of the time of day they plan to terminate analog service;²⁷ and
11. Requiring stations to notify viewers if they are planning to end analog service before 11:59:59 pm.²⁸

These additional restrictions and requirements for early termination of analog service would only increase the already substantial burdens (regulatory, financial and otherwise) on stations as they work to complete the transition to digital television. Unfortunately, however, they would do little to nothing to increase the protection of viewer expectations. As the Commission has previously acknowledged, the procedures for early analog termination established in the *Third Periodic Review* are already adequate to protect viewer expectations –

²¹ See *id* at ¶ 51.

²² See *id*.

²³ See *id*.

²⁴ See *id* at ¶ 57.

²⁵ See *id* at ¶ 57.

²⁶ See *id* at ¶ 58.

²⁷ See *id*.

²⁸ See *id*.

even after the postponement of the DTV transition date. For these reasons, KET respectfully submits that the changes proposed in the *NPRM* should not be adopted.

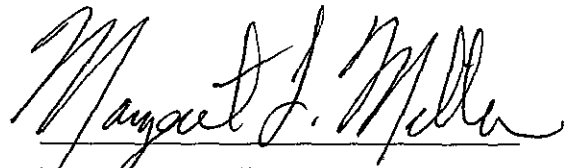
VII. Conclusion

For all these reasons, KET respectfully request that it be permitted to terminate analog service on KET's public TV stations on April 16th. KET also asks the FCC to "stay its hand" on imposing further DTV Transition obligations on already-severely-burdened public TV broadcasters. KET believes the record clearly shows that public TV stations – including many other statewide public TV networks – have wisely and competently managed "early" analog terminations. KET seeks to do the same.

Respectfully Submitted,

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